

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Coxcom, Inc.	)	CSR 6924-E, 6991-E
	)	
Comcast Cable Communications, LLC	)	CSR 7071-E, 7072-E, 7123-E
	)	
	)	
	)	
Petitions for Determination of Effective	)	
Competition in various Arizona, Georgia, and	)	
Illinois Communities	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 31, 2007**

**Released: June 1, 2007**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. This Order considers several petitions which Coxcom, Inc. (“Coxcom”) and Comcast Cable Communications, LLC (“Comcast”) (collectively the “Petitioners” or “operators”) filed with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that Petitioners are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”),<sup>1</sup> and the Commission's implementing rules,<sup>2</sup> and are therefore exempt from cable rate regulation in the communities listed in Attachment A (the “Communities”). No opposition to any petition was filed. Finding that Petitioners are subject to effective competition in the listed Communities, we grant the petitions.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.<sup>4</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>5</sup>

---

<sup>1</sup> 47 U.S.C. § 543(1).

<sup>2</sup> 47 C.F.R. § 76.905(b)(4).

<sup>3</sup> 47 C.F.R. § 76.906.

<sup>4</sup> See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

<sup>5</sup> See 47 C.F.R. §§ 76.906 & 907.

## II. DISCUSSION

### A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.<sup>6</sup> Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("Dish") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>7</sup> The two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV was the second largest, and DISH the third largest, MVPD provider during that period.<sup>8</sup> In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A relating to the competing provider test are DBS subscribers, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the "competing provider" test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.<sup>9</sup> We further find that the operators have demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the "competing provider" test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioners sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association ("SBCA") that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis. Coxcom states that is the largest MVPD in Sierra Vista and Fort Huachuca, Arizona.<sup>10</sup> In addition, Coxcom states it is the largest MVPD in Tempe, Guadalupe, Youngtown, and certain unincorporated areas of Maricopa County encompassing its franchise area.<sup>11</sup> Comcast asserts that it is the largest MVPD in the communities of Arlington Heights, Des Plaines, Mount Prospect, Prospect Heights, and Skokie, Illinois because its subscribership exceeds the DBS subscribership for those franchise areas.<sup>12</sup> With regard to the Communities of Tallapoosa, Waco, Mount

<sup>6</sup> 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>7</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>8</sup> *Twelfth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73, 21 FCC Rcd 2503 (rel. March 3, 2006).

<sup>9</sup> *See* 47 C.F.R. § 76.905(g).

<sup>10</sup> Coxcom Petition at 6 (CSR 6991-E).

<sup>11</sup> Coxcom Petition at 7 (CSR 6924-E).

<sup>12</sup> Comcast Petition at 5-6 (CSR 7123-E).

Zion, and Whitesburg, Georgia, Comcast contends that although it is unable to determine the largest MVPD, it has still satisfied the second prong of the competing provider test for these communities.<sup>13</sup> Comcast claims to be subject to competing provider competition in these communities because both the Comcast penetration figure and the aggregate DBS penetration figure clearly exceed 15 percent in each of these franchise areas.<sup>14</sup> Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Petitioners have demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in these communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Petitioners have submitted sufficient evidence demonstrating that its cable systems serving the communities set forth on Attachment A are subject to effective competition under the competing provider analysis.

### **B. Low Penetration Effective Competition**

5. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if “fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system.”<sup>15</sup> Comcast provided information showing that less than 30 percent of the households within the Haralson County, Carroll County, and Carrollton franchise areas subscribe to its cable services. Accordingly, we conclude that Comcast has demonstrated the existence of “low penetration” effective competition in Haralson County, Carroll County, and Carrollton franchise areas pursuant to our rules.

### **III. ORDERING CLAUSES**

6. Accordingly, **IT IS ORDERED** that the petitions filed by Comcast Cable Communications, LLC and CoxCom, Inc. listed on Attachment A for a determination of effective competition in the Communities listed thereon **ARE GRANTED**.

7. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to the local franchising authorities overseeing Comcast Cable Communications, LLC and CoxCom, Inc. **ARE REVOKED**.

8. This action is taken pursuant to authority delegated under Section 0.283 of the Commission’s rules.<sup>16</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division, Media Bureau

---

<sup>13</sup> Comcast Petition at 6 (CSR 7071-E and 7072-E).

<sup>14</sup> *Id.*

<sup>15</sup> 47 U.S.C § 543(l)(1)(A).

<sup>16</sup> 47 C.F.R. § 0.283.

## Attachment A

Cable Operator Subject to Competing Provider Effective Competition

## COXCOM, INC.: CSR 6924-E, 6991-E

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>DBS Subscribers<sup>+</sup></b>	<b>2000 Census Household</b>
<u>CSR 6924-E</u>				
Youngtown	AZ0111	23.64%	388	1,641
Guadalupe	AZ0321	17.66%	196	1,110
Tempe	AZ0036	15.61%	9,926	63,602
Unincorporated Maricopa County	AZ0049 AZ0112 AZ0116 AZ0131 AZ0148 AZ0171 AZ0183 AZ0191 AZ0208 AZ0209 AZ0246 AZ0322	28.61%	20,964	73,276

- Cox faces competition in Tempe from TVMAX. The subscribers of MVPDs in the franchise area are aggregated to determine whether the statutory 15 percent standard is satisfied under the second prong of the competing provider test.

CSR 6991-E

Sierra Vista	AZ0018	30.87%	4,089	13,247
Fort Huachuca	AZ0094	16.43%	156	949

## COMCAST CABLE COMMUNICATIONS, LLC: CSR 7071-E, 7072-E, 7123-E

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>DBS Subscribers<sup>+</sup></b>	<b>2000 Census Household</b>
<u>CSR 7071-E</u>				
Tallapoosa	GA0189	50.36%	598	1,187
Waco	GA 0976	65.60%	124	189
<u>CSR 7072-E</u>				
Mount Zion	GA0801	35.94%	156	434
Whitesburg	GA0703	70.98%	159	224
<u>CSR 7123-E</u>				
Arlington Heights	IL0554	28.12%	8,651	30,763
Des Plaines	IL0556	27.46%	6,142	22,362
Mount Prospect	IL0558	22.05%	4,759	21,585
Prospect Heights	IL0560	31.63%	2,018	6,379
Skokie	IL0657	23.68%	5,500	23,223

- For each of the franchise areas listed pursuant to CSR 7123-E, the DBS Subscribers category combines subscriber base information for DBS providers, Wide Open West, and RCN. DBS subscriber numbers combined with that of competitive providers Wide Open West and RCN in the respective franchise areas exceeds the 15 percent threshold required.

**Cable Operator Subject to Low Penetration Effective Competition**

## COMCAST CABLE COMMUNICATIONS, LLC: CSR 7071-E, 7072-E

<b>Communities</b>	<b>CUIDS</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Level</b>
<u>CSR 7071-E</u>				
Haralson County	GA0527	6,292	114	1.81%
<u>CSR 7072-E</u>				

---

Carroll County	GA0704 GA0671	20,569	2,156	10.48%
Carrollton	GA0974	7,121	37	0.52%

\*CPR = Percentage of DBS penetration

+ = See Cable Operator Petitions